



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket Nos. F334562, X308064

**JOHN H. CONKEY & SONS LOGGING, INC.
KENNETH B. CONKEY LOGGING
Appellants.**

**BOARD OF ASSESSORS OF
THE TOWN OF BELCHERTOWN
Appellee.**

DECISION WITH FINDINGS

The decision is for the appellee. On the basis of the testimony and evidence introduced at the February 4, 2019 hearing of these appeals, the Board makes the following findings of fact and rulings of law.

These appeals concern the assessors' denial of abatement requests for certain personal property used in the appellants' respective logging businesses. In Docket Number F334562, appellant John H. Conkey & Sons Logging, Inc. ("J.H.C. Logging") claimed that the value of certain machinery should be apportioned under G.L. c. 59, § 18 Second A, based on its partial use in Belchertown during the relevant time period. In Docket Number X308064, appellant Kenneth B. Conkey Logging ("K.B.C. Logging") claimed that certain of its machinery should be subject to the farm machinery and equipment excise under G.L. c. 59, § 8A, and not the general personal property tax under G.L. c. 59, § 18. Neither appellant can prevail in these appeals, however, because each failed to comply with statutory requirements that are prerequisites to an abatement.

Regarding the appeal of J.H.C. Logging, G.L. c. 59, § 61 provides that a "person shall not have an abatement of a tax imposed upon his personal property subject to taxation" unless he has filed with the assessors "a list of his personal estate as required by section 29." The list required by G.L. c. 59, § 29 is a "true list" of all of taxpayer's taxable personal property and must be filed with the assessors by March 1 of the year preceding the fiscal year at issue, unless the assessors grant an extension.

J.H.C. Logging concedes that its property is taxable but was unable to recall whether it had filed the list required by § 29. Failure to file the form of list is fatal to an abatement claim. See **Community Cablevision of Framingham v. Assessors of Framingham**, Mass. ATB Findings of Fact and Reports 1987-180 and cases cited;

PHILIP NICHOLS, TAXATION IN MASSACHUSETTS, THIRD EDITION, 302-03. In the absence of evidence establishing the filing of the § 29 list, no abatement can be granted.

Similarly, with respect to K.B.G Logging's claim that it is only liable for the excise under G.L. c. 59, § 8A, those claiming entitlement to § 8A must "annually, on or before March first, make a return on oath to the assessors" setting forth information concerning their farm machinery and equipment. Because no evidence was offered that the return required under § 8A had been filed, K.B.G. cannot qualify for § 8A treatment. Further, as is the case with J.H.C. Logging's claim, no abatement can be granted since there was no evidence that it filed the list required under § 29,

On the basis of these findings and rulings, the Board ruled that the appellants failed to meet their burden of proving entitlement to an abatement and issued a decision for the appellee in these appeals.

This is a single-member Decision promulgated in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

APPELLATE TAX BOARD

By:


Thomas W. Hammond, Chairman

Attest:  Clerk

Date: MAR - 5 2019
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.